

The 18th May, 1972

No. 5420-4-Lab-72/20281.—In pursuance of the provisions of section, 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to Publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Bharat Steel Tubes Ltd., Ganaur.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Application No. 61/2 of 1969 under section 33-A of the Industrial Disputes Act, 1947.

Between

SHRI SYED DAUD HUSSAIN WORKMAN AND THE MANAGEMENT OF M/S BHARAT
STEEL TUBES LTD., GANAUR

Present.—Shri Jaswant Singh with Shri Syed Daud Hussain concerned workman.
Shri J. P. Jain, for the management.

AWARD

This is a complaint under section 33-A of the Industrial Disputes Act, 1947. The facts material for the disposal of the case may briefly be stated as under :—

The workmen of M/s Bharat Steel Tubes Ltd; Ganaur had raised some demands pertaining to grant of bonus and supply of uniforms and the dispute had been referred for adjudication to this Tribunal,—*vide* order No. ID/RK/16-B-68/28949-53, dated 15th November, 1968 which was registered as Reference No. 61 of 1968 and has since been disposed of,—*vide* award, dated 31st January, 1972. Shri Syed Daud Hussain, a protected workman in the said establishment brought this complaint on 17th May, 1969 with the allegations that during the pendency of the above said reference and without obtaining the permission of this Tribunal the management had discharged him from service,—*vide* letter No. EAR/PERS/7072, dated 7th April, 1969 thereby contravening the provisions of section 33 of the Act. With these averments in brief he has prayed for his reinstatement with back wages.

Notice of the complaint was given to the management. The allegations made by Shri S.D. Hussain, concerned workman have been denied and his request for reinstatement has been strongly opposed. The plea raised on behalf of the management is that as a matter of fact this workman had over stayed his leave granted for 27th March, 1969 without reporting for duty continuously for 8 days and without affording any reasonable explanation for his absence from duty during this period and as such his services stood automatically terminated under clause 13(d) of the Certified Standing Orders of the Company by which he was governed. According to the management it is a case of abandonment of the services by the workman himself and not a case of his discharge or removal from service by way of any disciplinary action against him and as such the complaint under section 33-A of the Industrial Disputes Act, 1947 is not maintainable.

The following two issues were framed in the case.

1. Whether the applicant has abandoned the services of his own accord and his employment came to an end automatically under clause 13(d) of the company's Certified Standing Orders ?
2. Whether the application is not competent because there is no contravention of section 33 of the Industrial Disputes Act, 1947 ?

The management has examined 4 witnesses including Shri P.N. Bhandari Chief Time Keeper, M.W. 1, Shri S.C. Gupa, Tool Rooms Engineer, M.W. 2, Shri Mohinder Kumar Sharma Assistant Security Officer, M.W. 3, Shri Ajeet Singh, Sub-Inspector Police, Ganaur, M.W. 4. Besides examining the above named 4 witnesses the management has brought on record the Certified Standing Orders of the Company, copy Ex. M.W. 1/1.

Shri S.D. Hussain, concerned workman has made his own statement and examined 5 more witnesses including Shri K.D. Sharma, Security Officer, of the Company, W.W. 1, Shri E. Anand Rao, Works Manager, W.W. 2, Shri Teg Bahadur, Security Jamadar, W.W. 3, Shri Ram Avtar Sharma, Ex-President, B.S.T. Karamchari Union, W.W. 4, Shri Nafe Singh, Jeep Driver, W.W. 5.

The documentary evidence relied upon by the workman consists of copy of FIR, dated 27th March, 1968 Ex. W.W. 1/1, Photoscaped copy of the letter Ex. W.W. 1/2, letter dated 8th April, 1969 addressed to the Works Manager Ex. W.W. 2/1, reply of this letter Ex. W.W. 2/2, another letter dated 12th April, 1969 addressed to the Works Manager, W.W. 2/3, reply to this letter Ex. W.W. 2/4, application of the workman dated 29th March, 1969 Ex. W.W. 4/1, another application under the signatures of the President of the Union W.W. 4/2, letter, dated 12th April, 1969 addressed to the Works Manager, Ex. W.W. 4/3, copies of the Postal certificates dated 29th March, 1969 Ex. W.W. 1/1, and W.W. 2. Certificate showing the judicial custody of the workman from 1st April, 1969 to 6th April, 1969 Ex. W.W. 1/5, letter dated 16th December, 1968, addressed to B.S.T. Karamchari Union Ganaur Registered postal, Ex. W.W. 1/6, Endorsement dated 13th December, 1968 from Labour Officer, Sonepat Ex. W.W. 1/7, letter dated 12th April, 1969 addressed to W.M. Ex. W.-3, Copy of telegram, dated 30/31st March, 1969, addressed to District Magistrate, Rampur (U.P.) by Shri Latif Ahamad Ex. W.W. 1/8, Copy of telegram dated Nil, addressed to District Magistrate, Bareilly by Shri Yusaf Hussain, Ex. W.W. 1/9.

The management raised a preliminary objection that reference No. 61 of 1968 was made to the Industrial Tribunal at Chandigarh which had since been abolished and no fresh reference having been made to the Tribunal at Faridabad. There was no valid reference and hence no pendency before this Tribunal to take cognizance of

his complaint under section 33-A of the Industrial Disputes Act, 1947. This contention of the management has been repelled in the main reference as per award, dated 31st January, 1972, wherein it has been held that the Industrial Tribunal for Haryana at Chandigarh to which the reference of the dispute had been made had in fact never stood abolished and only the Headquarters of the said Tribunal had been shifted from Chandigarh to Faridabad only a few days after the order of reference and that being so this Tribunal was competent to adjudicate upon the demands the subject matter of the reference.

Later on still another objection was raised on behalf of the management. It was urged that the said reference related to two particular demands of the workmen (i) grant of bonus for the year 1967-68 (ii) Supply of uniforms. The establishment being still in its infancy having started its production only in the year 1965. The demand for bonus was not maintainable on account of the exemption under section 16(i) of the Payment of Bonus Act, 1965 and the demand for the grant of uniforms was barred under an existing settlement dated 21st May, 1968 between the parties. The contention which has been strongly opposed on behalf of the workmen is manifestly devoid of force. I have gone through the proceedings and the award in the said reference. The demand of the workmen for the supply of uniforms was no doubt held to be barred under an existing settlement between the parties, although it had been stated on behalf of the management that the question of the supply of uniforms to different type of workmen was reviewed from time to time and the management was accordingly advised to reconsider the case and supply uniforms to the workmen who were genuinely found to be entitled to the same. But so far as the demand for the grant of bonus was concerned there was neither the plea nor any issue claimed that the reference was not competent on account of exemption under section 16(1)(b) of the Industrial Disputes Act, 1947. It is a different matter that the claim of the workman for grant of bonus for the particular year was not considered to be well founded on account of the losses incurred by this establishment during the relevant period. Therefore, the contention of the management that the provisions of section 33-A of the Industrial Disputes Act, 1947 are not attracted for want of pendency has no force at all. The pendency was there. The objection is accordingly overruled.

So, the main question that arises for determination and is of vital importance is whether it was a case of automatic termination of the services of this workman on account of his own conduct or whether the management had discharged him from service by way of disciplinary action. The answer to the question is not difficult to find. The Certified Standing Orders of the Company and the other material on record documentary as well as oral, are quite clear on the point. Clause 13(d) of the Certified Standing Orders reads as under:—

“In case a workman absents or over-stays for a period of over eight calendar days after the expiry of sanctioned leave, he will be deemed to have abandoned his service of his own accord and his employment will automatically come to an end. The company will be entitled to recover from such workman the wages for the full notice-period or the balance thereof, apart from any liquidated damages or other remedies to which the Company may be entitled.”

It is common ground between the parties that Shri S.D. Hussain had applied for leave for one day on 27th March, 1969 which was duly sanctioned. He had his rest on 28th March, 1969 and he was, therefore, required to report for duty on 29th March, 1969. According to his own showing he reported for duty only on 8th April, 1969. There was thus a continuous absence from duty for more than 8 days when the impugned letter, dated 7th April, 1969 was issued by the management intimating that his services stood terminated under clause 13(d) of the Certified Standing Orders of the Company.

Shri S. D. Hussain has argued that since a false case of theft had been got registered against him with the police at Ganaur and he remained in custody during the period in question, his case is not covered by clause 13(d) of the Certified Standing Orders of the Company nor has the management in fact taken action against him in accordance with the requirements of the said certified Standing Orders. According to him, the management was displeased with his Trade Union activities and with a view to dispense with his services he has been got falsely involved in case of theft which had ultimately been decided by the Court in his favour. There is no doubt evidence on the record to show that a case of theft of some property belonging to the company had been got registered with the local police and he had been taken into custody in connection with that case. But according to the statement of Shri Ajit Singh, S.H.O., M.W. 4 he was arrested only on 1st April, 1969 in District Rampur, U.P., his whereabouts during the proceedings 4 days being not available and that he remained in judicial custody at Sonepat from 2nd April, 1969 to 6th April, 1969. There is nothing on the record to indicate that he had made any attempt to write to the management while he was in custody to ask for the extension of his leave. It has been vehemently contended that as a matter of fact he had written to the management on 29th March, 1969 granting him leave for 15 days but evidence produced to support this contention is insufficient and self contradictory. I have been referred to the statement of Shri Ram Avtar Sharma, W.W. 4 who has deposed that he had gone to the management on 30th March, 1969 to deliver the two leave applications written on behalf of Shri S.D. Hussain but the management had refused to accept the same and he had, therefore despatched the leave application under postal certificate. The original certificates of posting have not been produced and a perusal of the copies Ex. W-1 and W-2 would show that they are of 29th March, 1969. If the applications had been sent under postal certificate after the management had refused to accept the same on 30th March, 1969 the certificates of posting could not be on 29th March, 1969 and if the said applications had in fact been sent under postal certificates on 29th - March, 1969 there was no question of Shri Ram Avtar Sharma going to the management with these applications on 30th March, 1969. No reliance can safely be placed upon this self contradictory piece of evidence.

It, therefore, follows that Shri S.D. Hussain, had not joined his duty within 8 days of the expiry of his leave nor submitted any explanation to the management during this period to show his inability to report for duty on account of circumstances beyond his control. According to the police record he was arrested in District Rampur (U.P.) on 1st April, 1969. Taking into consideration the fact that 28th March, 1969 was his rest day. He had still 3 clear days to apply for the extension of his leave. He could write to the management in this behalf even while he was in judicial custody from 2nd April, 1969 to 6th April, 1969. He has not afforded any explanation whatever for not reporting for duty on 7th April, 1969 after he had been released from the judicial custody. In the circumstances, his services stood automatically terminated under clause 13(d) of the Certified Standing Orders of the Company by which he was governed and the management had, therefore, issued the impugned letter, dated 7th April, 1969 informing him of the automatic termination of his services on account of the above happening. This action of the management cannot by any stretch of imagination be considered as a disciplinary action against the workman or his discharge or removal from service by way of punishment.

In view of the above, I am quite clear in my mind that it is not a case of contravention of the provisions of section 33 and as such the present complaint under section 33-A of the Industrial Disputes Act, 1947 is not maintainable as held in 1967-II-LLJ, page 883, cited by the learned representative of the management. Both the issues are accordingly decided against the workman. His complaint, in the result, shall stand dismissed. There shall be no order as to costs.

Dated 9th May, 1972.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 559, dated 9th May, 1972

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 9th May, 1972.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

B.L. AHUJA,

Commissioner for Labour & Employment,

DEVELOPMENT AND PANCHAYAT DEPARTMENT
HARYANA

The 19th May, 1972

No. 2980-2ECDI-72/6075.—Shri Bachan Singh, Co-operative Inspector will hold the current charge of the Barara Block in addition to his own duties till a regular Block Development and Panchayat Officer is posted in that Block.

2. While holding the charge, the aforementioned Officer shall exercise the powers of Drawing, Disbursing and Controlling Officer in respect of the Barara Block.

N.K.S. GHALA,
Dy Secy.
CO-OPERATION DEPARTMENT
The 16th May, 1972

No. 3667-C-II-72/17845.—The Governor of Haryana is pleased to nominate the following additional members

- (1) Representative, National Co-operative Development Corporation, New Delhi.
- (2) Joint Registrar, Co-operative Societies (Marketing), Co-operative Department, Haryana, Chandigarh.

G. L. BAILUR, Secy.